

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TIMOTHY DESCUTIDO, )  
Plaintiff, )  
vs. )  
DIRECTV, )  
Defendant. )  
Case No. 2:12-cv-02090-MMD-GWF  
**ORDER**  
Application to Proceed in Forma  
Pauperis (#1) and Screening of  
Complaint

This matter comes before the Court on Plaintiff Timothy Descutido's ("Plaintiff") Application to Proceed in Forma Pauperis (#1), filed on December 7, 2012.

## BACKGROUND

Plaintiff's Complaint alleges he suffered employment discrimination by employer DIRECTV. Plaintiff initially filed his claim with the Equal Opportunity Employment Commission ("EEOC") against Golden Harvest Enterprises, LLC ("GHE"). Plaintiff represents, however, that after learning federal employment discrimination statutes only reach employers with at least 15 employees, he "filed for [a] second time" against DIRECTV. Plaintiff attached the EEOC's Dismissal and Notice of Suit Rights dated September 13, 2012 (#1-1 at 2), which names GHE as the respondent.

## DISCUSSION

#### **I. Application to Proceed In Forma Pauperis**

Plaintiff filed this instant action and attached a financial affidavit to his Application and Complaint as required by 28 U.S.C. § 1915(a). Having reviewed Plaintiff's financial affidavit under section 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. Therefore,

1 Plaintiff's request to proceed in forma pauperis in federal court is granted.

2       **II. Screening the Complaint**

3 Upon granting a request to proceed in forma pauperis, a court must additionally screen a  
 4 complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to  
 5 dismiss a case if the action is legally frivolous, fails to state a claim upon which relief may be  
 6 granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §  
 7 1915(e)(2). Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain “a short and  
 8 plain statement of the claim showing that the pleader is entitled to relief[.]”

9 Plaintiff does not plead any facts that indicate under which discrimination statute he seeks  
 10 relief, or that establish he suffered employment discrimination. Therefore, the Court finds Plaintiff  
 11 has not plead sufficient facts to state a claim upon which relief can be granted. Furthermore,  
 12 certain federal anti-discrimination statutes require Plaintiff to exhaust his administrative remedies  
 13 by, among other things, obtaining a right-to-sue letter from the EEOC. *See, e.g.*, 42 U.S.C. §  
 14 2000e-5(f)(1). After receiving the right-to-sue letter, the plaintiff may sue in federal or state court.  
 15 *Id.; see also Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 825-26 (1990). Here, Plaintiff has  
 16 attached a right-to-sue letter from the EEOC. Plaintiff's letter, however, permits him to pursue an  
 17 action against GHE only. Therefore, to the extent Plaintiff was required to obtain a right-to-sue  
 18 letter, it appears Plaintiff has not exhausted his administrative remedies as to the defendant he  
 19 names, DIRECTV.

20 In the event Plaintiff elects to proceed in this matter by filing an amended complaint, he is  
 21 informed that the Court cannot refer to a prior pleading to make his amended complaint complete.  
 22 Local Rule 15-1 requires that an amended complaint be complete in itself without reference to any  
 23 prior pleading. This is because, as a general rule, an amended complaint supersedes the original  
 24 complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once Plaintiff files an amended  
 25 complaint, the original pleading no longer serves any function in the case. Therefore, in an  
 26 amended complaint, as in an original complaint, each claim and the involvement of each defendant  
 27 must be sufficiently alleged.

28 ...

1           **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed In Forma Pauperis  
2 (#1) is **granted**. Plaintiff shall not be required to pay the \$350.00 filing fee.

3           **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to  
4 conclusion without the necessity of prepayment of any additional fees or costs or the giving of  
5 security therefor. This Order granting leave to proceed in forma pauperis shall not extend to the  
6 issuance of subpoenas at government expense.

7           **IT IS FURTHER ORDERED** that the Clerk of the Court shall file Plaintiff's Complaint  
8 (#1-1).

9           **IT IS FURTHER ORDERED** that Plaintiff's Complaint is **dismissed** without prejudice  
10 for failure to state a claim upon which relief can be granted.

11           **IT IS FURTHER ORDERED** that Plaintiff shall have until **March 1, 2013** to file an  
12 amended complaint.

13           DATED this 29th day of January, 2013.

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16           GEORGE FOLEY, JR.  
17           United States Magistrate Judge  
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